

Hon. Marsha Pechman

Sentencing: 01.08.10

10:00 AM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

VIKTOR KOBZAR,

Defendant.

NO. CR 09-084 MJP

SENTENCING MEMORANDUM

I. INTRODUCTION:

COMES NOW defendant Mr. Viktor Kobzar and hereby files this sentencing memorandum through his attorney of record, John R. Crowley. The sentence recommendation referenced below is based upon this memorandum, the files and records in this case and such further evidence and arguments as may be heard by the Court at the sentencing hearing in this matter. It respectfully serves the purpose of assisting the Court in the determination of the appropriate sentence in this matter.

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The Crowley Law Firm, PLLC

Smith Tower
Suite 1015
506 Second Avenue
Seattle, Washington 98104
Tel (206) 625-7500 ♦ Fax (206) 625-1223

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I. Relevant Factual History of the Case.

Viktor Kobzar was arrested after being charged by indictment with wire, mail, bank fraud and a number of other offenses. Mr. Kobzar, a United States citizen, has remained in custody since his arrest. After substantial cooperation followed by plea negotiations, Mr. Kobzar pleaded guilty to a single count of bank, mail, and wire fraud, 18 U.S.C. § 371 (Count I), and an additional count of Making a False Tax Return in violation of 18 U.S.C. § 7206 (a), (Count II).

In large part, this case can only be described as a major fraud of which Mr. Kobzar was a very significant participant. There were many named and unnamed victims of this fraud only some of which are requesting restitution.

II. Pre-Sentence Report, Available Penalties to the Court, and Guideline Calculations.

Mr. Kobzar has no objections to the pre-sentence report. At sentencing, he faces the following maximum sentences:

1. Count I: 60-months, \$250,000.00 fine, and 3-years supervised release.
2. Count II: 36-months, \$100,000.00 fine, and 1-year supervised release.

His guideline range exceeds the statutory maximum as to Count I. United States Probation, the United States Attorney and counsel for Mr. Kobzar have all calculated his sentencing range at 70-87 months (Count I), with a base offense level of “27” and a criminal history category I. Count II has a sentencing range of 6-18 months.

III. Sentencing Factors.

After *Booker*, it became apparent the District Courts could finally make sentencing decisions which better reflected many factors that should be considered at sentencing other than simply considering offense levels and criminal history. The desired sentence should, of course, be sufficient but not more than necessary to meet the factors set forth in § 3553(a).

In short, the factors to be considered in sentencing a criminal defendant are that the sentence should: (1) reflect the seriousness of the offense, to promote respect for the law and to provide a just punishment for the offense. (2) Afford adequate deterrence of further criminal conduct of the defendant. (3) Protect the public from further crimes of the defendant. (4) Provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner and (5) avoid unwarranted sentence disparities among defendants with similar records who have also been found guilty of similar offenses.

IV. Application of the 18 U.S.C. § 3553(a) Factors and Sentencing Recommendation.

As will be further discussed below, Mr. Kobzar believes that a sentence of 42-months on Count I and 6-months Count II, concurrent, will adequately meet the aspect of punishment that is not greater than necessary to effectuate the sentencing principals as set forth in § 3553(a).

a. Characteristics of the Offense and of Mr. Kobzar.

Obviously, this offense was very serious, was of great magnitude and had many

1 victims both named and unnamed. Neither the gravity or magnitude of the offense can
2 be overstated. Mr. Kobzar agrees with the description of the offense as set forth in the
3 United States Probation report.

4 Mr. Kobzar, however, has clearly accepted responsibility for his actions as
5 evidenced in debriefings with the government. Mr. Kobzar has always clearly
6 established throughout his cooperation with the government a forthright and honest
7 acceptance of responsibility in relation to his wrongdoing. Mr. Kobzar met with the
8 government on 3-different occasions totaling about 4 ½ hours of discussions. Mr.
9 Kobzar gave a full accounting of his conduct and that of his co-defendant and others
10 both named and unnamed in the indictment. Mr. Kobzar understands and
11 appreciates the seriousness of the wrongs he has committed.

12 Mr. Kobzar is representative of those defendants where a sentence below that of a
13 similarly situated co-defendant (Vladislav Baydovskiy) would allow for the
14 sentencing court's discretion to implement a more rational, suitable and proportional
15 punishment for him. Establishing a sentence below that of Mr. Baydovskiy allows the

16 District Court to impose a more personalized sentence for someone such as Mr.
17 Kobzar who based upon his prior record is not a repeat offender and who likely
18 played a lesser role in the offense than did Mr. Baydovskiy.

19 Although Mr. Kobzar was in effect a 50/50 business partner with Mr. Baydovskiy
20 throughout this fraud, he constantly found himself on the defense with Mr.
21 Baydovskiy and in many respects, felt that he worked for Mr. Baydovskiy.
22 Although they evenly split the proceeds of their illegal business transactions, Mr.
23 Baydovskiy would control the bank accounts, the deposits and withdrawals into
and from the business accounts and have substantial control of their relationship
even subsequent after their arrest on these charges. Mr. Bayadovskiy is a stronger
personality than Mr. Kobzar and was more aggressive in both legitimate and illegal

1 business activities he shared with Mr. Kobzar.

2 For example, in August of 2009 and while both were in custody, Mr.
3 Baydovskiy sued Mr. Kobzar over some of these business related
4 conflicts – knowing of course that Mr. Kobzar did not have sufficient financial
5 means to defend the frivolous lawsuit. Mr. Kobzar then defaulted on the suit, a
6 judgment was entered, and funds Mr. Kobzar had intended to use to satisfy
7 restitution were garnished by Mr. Baydovskiy (a bit above U.S. \$105,000.00).

8 It is important for the Court to understand that the defendant has gathered
9 letters of support to present a truthful and valid representation of his life. These
10 letters are attached to Exhibit A herein. They are not included for the purpose of
11 creating a mood of pity or sympathy for the defendant but rather they serve as
12 verification that he simply became distracted by the evils of our society and escape
13 the development of honorable goals and a well adjusted lifestyle. In all the
14 conversations the defense has had with Mr. Kobzar, it was never apparent from his
15 explanation that he was attempting to depreciate either his wrongdoing or his
16 involvement in the offense. Rather, he was accepting responsibility for his poor
17 judgment. It is therefore requested that this Court consider that under 18 U.S.C.
18 § 3553 both the deterrence and punishment aspects of the court's sentencing goals
19 can be satisfied with a custody sentence of 30-months.

20 As stated in the PSR, Mr. Kobzar spent a considerable time smoking marijuana
21 prior to and during this offense. His family resides in Kirkland, Washington. Mr.
22 Kobzar is desirous of attending treatment and residing at the FDC Sheridan, Oregon.

23 **b. Seriousness of the Offense, Promotion of Respect for the Law, Just
Punishment and Protection of the Public and Need for Medical Care.**

1 A 42-month sentence satisfies the § 3553(a) factors. This recommended sentence will
 2 have the desired effect as set forth in § 3553(a).

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 7 **c. The Need to Avoid Sentencing Disparity.**

8 The case now before the court poses significant issues with respect to potential
 9 sentencing disparities however. For example, Camie Byron, David Sobol, and Alla
 10 Sobol each received 24-month sentences. Each of these individuals had sentencing
 11 guideline calculations identical to Mr. Kobzar. Obviously and despite their guideline
 12 calculations, each of these individuals were less culpable than Messrs. Baydovskiy
 13 and Kobzar. Understandably, these individuals should have received shorter
 14 sentences than Mr. Baydovskiy.

15 Mr. Baydovskiy received a 60-month sentence from the court upon the
 16 government's recommendation of 78-months. It is anticipated that the government
 17 will recommend a 60-month sentence for Mr. Kobzar. These recommendations, of
 18 course, incorporate the government's understanding of the minute details of the case
 19 and should serve to signal the court that the government too believes that Mr. Kobzar
 20 was less culpable than Mr. Kobzar for these crimes. It is with this analysis that Mr.
 21 Kobzar makes his recommendation for a proportionally less sentence to punish his
 22 significantly less involvement in the crime.

23 **V. Conclusion**

The Court can make a vertical departure from the guidelines. The information
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1 presented above gives the Court good cause to depart downward from the guidelines
2 and below the sentence at which it sentenced Mr. Baydovskiy.

3 The defense believes that the Court will find that justifiable reasons exist of a
4 kind and to a degree that would allow the Court to depart below the guideline range to
5 secure a sentence of 42-months. On behalf of Mr. Kobzar, the defense requests the
6 Court to also recommend a drug program for him that is offered by the Bureau of
7 Prisons (BOP) and designation for commitment at FDC Sheridan, Oregon.

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9 Respectfully submitted this 4th day of January, 2010.

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11 /s/ John R Crowley, WSBA# 19868
12 John Crowley, Lawyer
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CERTIFICATE OF ELECTRONIC SERVICE

On the 4th day of January, 2010, I filed a Sentencing Memorandum on the above captioned cause by filing the motion through the ECF filing system by uploading a copy of this motion and proposed order through the ECF system for distribution to all noted recipients associated with this case via the internet as well as the Clerk of the United States District Court.

Signed,

/s/Kaitlyn Jackson, Paralegal
The Crowley Law Firm, PLLC
Suite 1015
506 Second Avenue
Seattle, Washington
206.625.7500 (L)
206.625.1223 (F)
john@johncrowleylawyer.com